

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3 BACKERTOP LICENSING LLC,)
4 Plaintiff,) C.A. No. 1:22-cv-00573-CFC
5 v.)
6 AUGUST HOME, INC.,)

7 Defendant.)

8 BACKERTOP LICENSING LLC,)
9 Plaintiff,) C.A. No. 1:22-cv-0572-CFC
10 v.)
11 CANARY CONNECT, INC.,)

12 Defendant.)

15 Thursday, November 10, 2022

16 10:00 a.m.

Evidentiary Hearing

18 844 King Street
19 Wilmington, Delaware

20 BEFORE: THE HONORABLE COLM F. CONNOLLY
21 United States District Court Judge

1 APPEARANCES:

2
3 CHONG LAW FIRM PA
BY: JIMMY CHONG, ESQ.

4 -and-

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6 FRESH IP, PLC
BY: RONALD BURNS, ESQ.

7 Counsel for the Plaintiff

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9 CONNOLLY GALLAGHER
BY: ALAN R. SILVERSTEIN, ESQ.

10 Counsel for the Defendant

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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at
10:00 a.m.)

— — —

THE COURT: All right. Please be seated.

Mr. Chong, good morning.

MR. CHONG: Good morning, Your Honor.

THE COURT: And Mr. Siverstein.

MR. SILVERSTEIN: Good morning, Your Honor.

THE COURT: I guess, are you Mr. Burns?

MR. BURNS: That's correct, Your Honor.

THE COURT: All right.

Mr. Chong, did you ever find out who NWM is?

MR. CHONG: No. No, Your Honor. I was -- I

did not.

THE COURT: Okay.

Is Ms. LaPray here?

MR. BURNS: Yes, she is, Your Honor.

THE COURT: Okay. Are there any documents you all want to give me, by any chance?

MR. BURNS: There is something I would like to point out to the Court.

THE COURT: Okay.

1 **MR. BURNS:** It's actually the declaration from
2 Document 23-1. I have a copy for the Court.

3 **THE COURT:** You want to hand it up, then, go
4 ahead.

5 **MR. BURNS:** It's --

6 **THE COURT:** Is this from Ms. LaPray?

7 **MR. BURNS:** Yeah. This is the declaration from
8 Ms. LaPray. I just wanted to point out a typographical
9 error.

10 **THE COURT:** Oh, the heading. It says
11 "Lamplight."

12 **MR. BURNS:** Yes, exactly. So the case number
13 is correct. The defendant listed is correct. But,
14 obviously, the typographical error, that was Backertop's
15 case, obviously.

16 **THE COURT:** Thought so. Okay.

17 All right. Ms. LaPray, do you want to take the
18 stand.

19 **MR. BURNS:** Your Honor, if I may. Can I make
20 some introductory remarks and some --

21 **THE COURT:** Sure.

22 **MR. BURNS:** -- make note of some things?

23 **THE COURT:** All right. Ms. LaPray, you can
24 have a seat, then.

25 **MR. BURNS:** First of all --

1 **THE COURT:** You can come to the podium.

2 **MR. BURNS:** Oh, yes.

3 I think it might be helpful, at least from my
4 perspective, I think it might be helpful to the Court to
5 set, kind of, the basis for our responses to the standing
6 orders.

7 **THE COURT:** Well, let's have Ms. LaPray step
8 out before you do that. Just --

9 **MR. BURNS:** Okay.

10 **THE COURT:** And I'm not -- no offense to you,
11 Ms. LaPray. It's just we're going to have you testify
12 under oath and, obviously, you know, it's important to
13 testify truthfully. I'd rather you not be influenced by
14 anything.

15 Just give me a second, please, sir.

16 Okay. Go ahead, sir.

17 **MR. BURNS:** So I just wanted to provide a basis
18 of context for our responses to the standing orders, both
19 initially and then following.

20 In this field of practice, nonrecourse -- this
21 is specifically addressing nonrecourse versus recourse
22 funding. Generally speaking, there are large entities
23 that do nonrecourse-type funding. Generally, they take
24 very large cases.

25 **THE COURT:** Let me just step back. What does

1 nonrecourse mean to you?

2 **MR. BURNS:** Nonrecourse means that they will
3 not be able to recoup any of the money that they lend to
4 the party that they lend to.

5 **THE COURT:** It means -- nonrecourse is, it's
6 secured; fair? It's secured. When we speak of
7 nonrecourse, as opposed to recourse, we're talking about,
8 there's a security interest.

9 **MR. BURNS:** Well, my understanding and our
10 understanding is slightly different. I've worked with
11 other clients, both when I was in sole practice and with
12 the firm that I'm with now where we have worked with some
13 of these larger funding entities. That's why I'm trying
14 to set the basis for this.

15 And their nonrecourse funding typically takes
16 the form of a large tranche of money on cases that they
17 expect a very favorable resolution of. And then if they
18 advance that money and there's no recovery, then they
19 don't get any recovery.

20 If there is recovery, then they get, typically,
21 1-, 2-, 3X times whatever they've invested. That's what
22 we typically refer to as a nonrecourse --

23 **THE COURT:** Well, you know, what you personally
24 typically refer to something is kind of a -- it's
25 troubling. I mean, I'm looking up on the dictionary right

1 now, and I think if you just -- if you want to Google
2 recourse versus nonrecourse, right.

3 And that's why I asked at the beginning, isn't
4 recourse or nonrecourse, rather, is being or based on an
5 agreement in which the lender has no right of recourse to
6 the borrower's assets beyond stated limits. Right.

7 **MR. BURNS:** Okay. Yes, sir. That would be --
8 that would be correct.

9 **THE COURT:** You would agree with that?

10 **MR. BURNS:** And, typically, in those types of
11 arrangements, the stated limits are, if there's no
12 recovery from the case, then there is no -- nothing for
13 the lender to recover from.

14 **THE COURT:** Right.

15 **MR. BURNS:** And recourse would be, then,
16 obviously, the opposite of that. Meaning, if there are
17 funds advanced, the entity or the party is responsible for
18 repayment of those.

19 **THE COURT:** Right.

20 **MR. BURNS:** So in the context of --

21 **THE COURT:** And if you have a lien on something
22 or secured interest, what's that?

23 **MR. BURNS:** I'm not sure I understand what
24 you're asking, Your Honor.

25 **THE COURT:** If you have a lien -- if I lend you

1 money and I require, though, you agree that there's a
2 lien?

3 **MR. BURNS:** That would be secured.

4 **THE COURT:** That's a secured? That would be
5 nonrecourse?

6 **MR. BURNS:** No. That -- well, this is kind of
7 getting beyond the scope of what I was attempting to
8 address. I was just trying to lay the bases for our
9 responses.

10 I'm not sure, technically, what that would fall
11 under. To me, that would seem like there would be
12 recourse.

13 **THE COURT:** Okay.

14 **MR. BURNS:** Because you do -- in order to
15 satisfy the lien, eventually you're going to have to
16 repay.

17 **THE COURT:** All right. Go ahead.

18 **MR. BURNS:** Okay. So simply, I'm looking at
19 the two orders that were entered by this Court in April,
20 and both, in terms of ownership order, we -- you know, we
21 read this as, "It requires the disclosure of every owner,
22 member, or partner of the party proceeding up the chain of
23 ownership until the name of" --

24 (Court reporter clarification.)

25 **MR. BURNS:** Oh, I'm sorry. Excuse me.

1 So -- "the name of every owner, member, and
2 partner of the party proceeding up the chain of ownership
3 until the name of every individual and corporation with a
4 direct or direct interest in the party has been
5 identified."

6 So we took that at face value. And our initial
7 disclosure was, there's nobody else other than Ms. LaPray
8 who has ownership interest in the party. So that's why we
9 responded that way.

10 Then with respect to the funding arrangements,
11 again, our understanding of recourse versus nonrecourse,
12 we didn't understand there to be any nonrecourse funding.
13 So that's kind of where our response stopped and ended.
14 That's all --

15 **THE COURT:** Would you agree that a nonrecourse
16 loan is an arrangement where the borrower pledges
17 collateral as security for the loan?

18 **MR. BURNS:** I'm not going to question what
19 you're referring to. It's just our understanding as we
20 practice this when you're dealing with nonrecourse --

21 **THE COURT:** When you practice what?

22 **MR. BURNS:** Patent litigation and sometimes
23 using litigation funders. The litigation funders I've
24 dealt with, nonrecourse means there's no secured interest.
25 It's just if there's a recovery.

1 That was my only point in trying to explain our
2 interpretation of what the order was requiring. That's
3 all I wanted to address, Your Honor.

4 **THE COURT:** All right.

5 **MR. BURNS:** Okay.

6 **THE COURT:** And if you have any questions, it
7 seems to me, about an order, it seems to me, the
8 appropriate recourse is to seek guidance from the Court.

9 **MR. BURNS:** Yes, Your Honor.

10 And to be perfectly honest, we didn't have any
11 questions. We interpreted these as straightforward, and
12 we felt like we understood what was asked, and we felt
13 like we were fully responsive at the time.

14 So if there was any issue with that, that's our
15 fault, obviously.

16 But I did want to address that upfront today
17 just for purposes of understanding where we're going with
18 this.

19 **THE COURT:** Okay. Does anyone in this case
20 have a security interest in the recovery?

21 **MR. BURNS:** There are -- my firm has a
22 contingent fee interest. I believe Mr. Chong does, his
23 firm does as well. And then there are other parties,
24 consultants for Backertop that, I believe, also have
25 interest.

1 **THE COURT:** And by "interest," right, the --
2 does anybody have -- for instance, is there an agreement
3 that someone will have a lien on the recovery?

4 **MR. BURNS:** That would be with some of the
5 contingent fee. Yes, I believe there is a language to
6 that effect.

7 **THE COURT:** A lien is a secured interest,
8 correct?

9 **MR. BURNS:** That would be correct, Your Honor,
10 yes.

11 **THE COURT:** Okay. Thank you.

12 **MR. BURNS:** Okay. Thank you, Your Honor.

13 Your Honor, may I ask a question?

14 **THE COURT:** Sure.

15 **MR. BURNS:** In terms of, if we feel like we
16 need to enter an objection during the course of
17 questioning, how do you prefer that we handle that, just
18 raise it at the time?

19 **THE COURT:** Sure. Stand up and raise it.

20 **MR. BURNS:** Okay.

21 **THE COURT:** I'm not going to be asking for
22 privileged information, which would -- but if you have any
23 concerns at all, you can stand up. Probably want to limit
24 what you say in front of the witness.

25 **MR. BURNS:** Absolutely, yes.

1 **THE COURT:** Ms. LaPray, come on forward,
2 please.

3 **THE CLERK:** Please remain standing and raise
4 your hand. Please state and spell your name for the
5 record.

6 **THE WITNESS:** Lori LaPray. L-O-R-I,
7 L-A P-R-A-Y.

8 Lori LaPray, having been called as a witness, being
9 first duly sworn under oath or affirmed, testified as
10 follows:

11 **THE CLERK:** Thank you. You may be seated.

12 **BY THE COURT:**

13 **Q.** Good morning.

14 **A.** Good morning, Your Honor.

15 **Q.** Are you from Texas?

16 **A.** I am.

17 **Q.** Whereabouts?

18 **A.** Fort Worth.

19 **Q.** What do you do for a living?

20 **A.** So I work at the Holmes Firm. It's a law firm in
21 Dallas. And then I also work for the chairwoman of the
22 Dallas GOP.

23 **Q.** All right. The first thing you mentioned, you said
24 Holmes?

25 **A.** Yes, Holmes Firm.

1 **Q.** Holmes, H -- is it H-O --

2 **A.** H-O-L-M-E-S.

3 **Q.** Okay. Is it a law firm?

4 **A.** Yes, sir.

5 **Q.** And you're a paralegal? Or what do you do for a
6 living?

7 **A.** I'm a paralegal there. Yes, sir.

8 **Q.** How long have you been there?

9 **A.** I have been there a little over two years now.

10 **Q.** All right. Are you married?

11 **A.** Yes, sir.

12 **Q.** Is your husband's name Brandon?

13 **A.** Yes.

14 **Q.** What does he do for a living?

15 **A.** He is an independent contractor for Mavexar.

16 **Q.** All right. What does he do for Mavexar, if you know?

17 **A.** I mean, I think he just kind of reviews agreements.

18 Things of that nature.

19 **Q.** Is he a lawyer?

20 **A.** Yes, yes.

21 **Q.** Okay. And does he have a law firm?

22 **A.** No.

23 **Q.** All right. Now, the reason why you're here is
24 because I am told -- well, actually, you've said in a
25 declaration, I guess, that you own Backertop. Is that

1 fair?

2 **A.** Yes, sir.

3 **Q.** What is Back- -- how did you come up with the name
4 Backertop or did you come up with the name Backertop?

5 **A.** Mavexar came up with the name.

6 **Q.** All right. So how did you come to own Backertop?

7 **A.** So as I said, my husband has been an independent
8 contractor for Mavexar for almost seven years now. And so
9 he presented me with the opportunity to own some assets,
10 and I agreed.

11 **Q.** All right. Is that one of the things he does for
12 Mavexar, is he basically goes out and sells assets; is
13 that right?

14 **A.** That's not all he does, no.

15 **Q.** Well, does he do -- is that part of it?

16 **A.** Some.

17 **Q.** Okay. All right. So you were presented with this
18 opportunity to own some assets. All right.

19 At that time, had Backertop been formed?

20 **A.** No.

21 **Q.** Okay. So let's start with -- tell me about the
22 formation of Backertop. I mean, did you form it or did
23 Mavexar? Who formed it?

24 **A.** Mavexar formed the entity.

25 **Q.** All right. Did you sign any paperwork to form it?

1 **A.** No.

2 **Q.** All right. Do you know when it was formed?

3 **A.** I believe it was formed in April of 2022. I don't
4 know the exact date in April.

5 **Q.** Okay. Were there any fees to be paid to form it?

6 **A.** Mavexar upfronted those fees.

7 **Q.** When you say "upfronted," did you have to pay them
8 back those fees, formation fees?

9 **A.** No, sir.

10 **Q.** No?

11 **A.** No, sir.

12 **Q.** But you used the term "upfronted." Is there an
13 agreement that you'll pay back the fees to form Backertop?

14 **A.** Not to form the entity, no.

15 **Q.** So is it fair, then, when you said "upfront," it's
16 really they just paid for it?

17 **A.** So sorry. Yes, sir.

18 **Q.** Okay. So Mavexar paid whatever it took to create
19 Backertop, and they did all the work to create it; that's
20 fair?

21 **A.** Correct. Yes, sir.

22 **Q.** All right. Did they create any other LLCs for you?

23 **A.** I do have a few more LLCs.

24 **Q.** Do you remember the names of those?

25 **A.** I wasn't prepared to come and talk about those other

1 LLCs. It's just Backertop. So I can't recall, off the
2 top of my head, what the other names are at this moment.

3 **Q.** All right. Did anybody ever tell you why it's called
4 Backertop?

5 **A.** No, sir.

6 **Q.** No?

7 And did anybody from Mavexar tell you why you should
8 operate as an owner of an LLC?

9 **A.** No, sir.

10 **Q.** Well, what were -- was Backertop the first LLC that
11 Mavexar formed for you?

12 **A.** No, sir.

13 **Q.** All right. Well, what does Mavexar tell you about
14 why you should operate as an LLC?

15 **A.** They haven't.

16 **Q.** They haven't?

17 **A.** No, sir.

18 **Q.** Now, does Backertop own any assets?

19 **A.** They own patents.

20 **Q.** How many patents?

21 **A.** I believe about five, I think.

22 **Q.** All right. And the patents -- are you aware that in
23 these cases, there are four patents?

24 **A.** Yes, sir.

25 **Q.** All right. There's three patents in two of the cases

1 and then there's an extra patent in, what I'll call, the
2 572 case?

3 **A.** Okay.

4 **Q.** Right. So tell me how Backertop came to own these.
5 Let's start with the '385 patent.

6 **A.** Okay. I know there was an agreement. I mean, I hire
7 Mavexar to obtain these patents.

8 **Q.** All right. And you have a written agreement with
9 Mavexar?

10 **A.** Yes, sir.

11 **Q.** All right.

12 **THE COURT:** Did you all bring the written
13 agreement?

14 **MR. BURNS:** Yes, Your Honor.

15 Want me to give Ms. LaPray a copy as well?

16 **THE COURT:** That would be great. And, in fact,
17 do you -- may we have this as an official exhibit?

18 **MR. BURNS:** Yes, that's fine.

19 **THE COURT:** Okay. And then if you have an
20 extra copy to provide Ms. LaPray, that would be great.

21 And can I have this marked as Exhibit 1,
22 please.

23 I'll have that in a second.

24 **BY THE COURT:**

25 **Q.** So this agreement, we're going to mark as Exhibit 1.

1 Did you have a lawyer represent you in connection
2 with the negotiation of this agreement with Mavexar?

3 **A.** No, sir.

4 **Q.** Okay. Whom did you negotiate with when you
5 negotiated the agreement with Mavexar?

6 **A.** I was just presented the agreement, went over it with
7 my husband, Brandon LaPray, then I agreed, and I signed
8 it.

9 **Q.** Okay.

10 All right. And I just want to turn to Page 3 --
11 well -- yeah, let's go to Page 3 of the agreement. It
12 says, under Section 3, it says, "Costs and Expenses,"
13 right?

14 **A.** Yes, sir.

15 **Q.** And then in the third paragraph, down there, it says,
16 "Upon execution of this agreement, client" -- are you the
17 client?

18 **A.** Yes, sir.

19 **Q.** All right. It says, "client hereby grants to
20 consulting company." And is Mavexar the consulting
21 company?

22 **A.** Yes, sir.

23 **Q.** All right. So then it says -- I will start again.

24 "Upon execution of this agreement, client" -- you --
25 "hereby grants to consulting company, Mavexar, a lien on

1 any gross recovery to the full extent permitted by Texas
2 law to secure consulting company's costs and expenses
3 reimbursable in accordance with this agreement."

4 I've read it, pretty much, correctly?

5 **A.** Yes, sir.

6 **Q.** All right. What does that mean to you?

7 **A.** It means that I would have to pay any costs and
8 expenses that they upfront in any litigation cases.

9 **Q.** And what about a lien? Did anybody explain to you
10 what the lien was?

11 **A.** No, sir. No, sir.

12 **Q.** How about, it says to secure Mavexar's costs and
13 expenses. Did anybody explain to you what that language
14 "to secure" meant?

15 **A.** No, sir.

16 **Q.** No? All right.

17 So you negotiated this agreement, it looks like, in
18 April of 2022, consistent with your recollection. And
19 it's signed by somebody named Sanjay Pant, P-A-N-T.

20 Have you ever met that person?

21 **A.** No. Not personally, no.

22 **Q.** Have you ever had any discussions or e-mail
23 correspondence with that person?

24 **A.** No, sir.

25 **Q.** All right. And it says in here, in terms of

1 responsibilities, on Page 1 of the agreement, that "the
2 consulting company shall provide nonlegal services."

3 Was that your understanding, that Mavexar was
4 providing nonlegal services?

5 **A.** Correct. They're my consultant. Yes, sir.

6 **Q.** All right. Now, you have a lawyer in this case,
7 correct?

8 **A.** Correct. Yes, sir.

9 **Q.** Actually, you have more than one.

10 Who are the lawyers that are representing Backertop
11 in this case?

12 **A.** It's Mr. Ron Burns and Mr. Jimmy Chong.

13 **Q.** Now, when did you first meet Mr. Burns?

14 **A.** Personally met Mr. Burns probably about month and a
15 half ago.

16 **Q.** Had you ever had communications with Mr. Burns in any
17 form? You know, oral, text messages, e-mails, letters --
18 any form of communication with Mr. Burns prior to a month
19 and a half ago?

20 **A.** No, all communications were kind of just through
21 Mavexar.

22 **Q.** All right. Is it fair to say, then, Mr. Burns was
23 retained by Mavexar?

24 **A.** Yes, sir. Yes, sir.

25 **Q.** And how about Mr. Chong? Have you -- had you ever

1 met Mr. Chong before this morning?

2 **A.** Yes. I met Mr. Chong on -- the same time I met
3 Mr. Burns, about a month and a half ago.

4 **Q.** Where did you meet them?

5 **A.** It was virtual, through Zoom.

6 **Q.** All right. Since you had never met them and --
7 before that month and a half ago, I mean, how did you know
8 how to even contact them or have this Zoom call with them?

9 Did somebody from Mavexar set it up?

10 **A.** Yes, sir.

11 **Q.** Who was that?

12 **A.** I believe it was Linh Dietz.

13 **Q.** And if you met them a month and a half ago, that
14 would make it, I don't know, September or October, I
15 guess.

16 When was it? Do you remember?

17 **A.** I don't -- I can't recall off the top of my head.

18 **Q.** All right. It's certainly, though, months after the
19 case was filed, correct?

20 **A.** Correct. Yes, sir.

21 **Q.** Do you know when you retained -- or I shouldn't say
22 "you."

23 Do you know when Mr. Chong or Mr. Burns were retained
24 to file this lawsuit?

25 **A.** I relied on Mavexar, so I would have to pull the

1 agreement between Mavexar and the attorneys of when they
2 were retained to give you the date.

3 Q. All right. So all the negotiations with Mr. Chong
4 and Mr. Burns, to get them to be retained to represent
5 Backertop, were done through Mavexar; is that correct?

6 A. Yes. Mavexar has my full authority to do so.

7 Q. When did you give them that full authority?

8 A. They have it in the agreement, that they have my full
9 authority to make decisions on behalf of my entity.

10 Q. All right. So it's like a blanket authority, they
11 have, essentially; is that right?

12 A. I mean, I have final say, but I do give them
13 authority to negotiate the contracts and so forth. But I
14 have final say on everything.

15 Q. Well, what does it mean that you have final say.
16 Help me out with that.

17 A. Okay. So for example, say there's litigation and
18 there's a settlement agreement. And so they present me
19 with a settlement agreement. I have a choice of whether
20 or not to accept it or reject it or to file suit or not to
21 file suit because it's my company. I own it 100 percent.

22 Q. And what does it mean when you say, though, you have
23 final say? Trying to understand.

24 I mean, for instance, were you presented with the
25 complaints in these cases before they were filed?

1 **A.** Yes, sir.

2 **Q.** Okay. By whom?

3 **A.** Brandon, my husband.

4 **Q.** All right. And did you discuss with anybody the
5 merits of the claims that were being brought in the
6 lawsuit?

7 **A.** No, sir. I rely on Mavexar and my attorneys for
8 that.

9 **Q.** And by your attorneys, you mean Mr. Burns and
10 Mr. Chong?

11 **A.** Yes, sir.

12 If you'd like me to use their names, I'm more than
13 happy to.

14 **Q.** That's fine. That's fine.

15 So you rely on the attorneys and you rely on Mavexar?

16 **A.** Correct. Yes, sir.

17 **Q.** Fair to say, though, you don't have any -- any
18 knowledge with which to question their judgments?

19 **A.** I trust their judgment.

20 **Q.** Right. Have you ever rejected any recommendations
21 they've given you?

22 **A.** No, sir.

23 **Q.** Would you have any ability, through your knowledge of
24 the patents or anything else, to question their decisions?

25 **A.** No, I trust them. I've known them for almost --

1 Mavexar, for almost seven years, so I trust their
2 judgment.

3 Q. All right. So let's talk about the '385 patent.

4 What, if anything, did Mavexar, or anybody else, tell
5 you about that patent before Backertop took ownership of
6 it?

7 A. Well -- so I hired Mavexar and my attorneys to look
8 over these patents. I -- the only thing I know about
9 these patents are they're due -- other than that, I don't
10 know how to read them, which is why I hired Mavexar to do
11 so.

12 Q. How much did Backertop pay for the '385 patent?

13 A. I couldn't tell you, off the top of my head, how
14 much.

15 Q. Do you remember how much Mavexar -- I'm sorry, how
16 much Backertop paid to own the '617 patent?

17 A. No, sir.

18 Q. Well, was there a sum of money paid in any amount?

19 A. There's no upfront costs for the patent. It all gets
20 paid out of any settlements that come through. They get a
21 percentage of that, the previous patent owners.

22 Q. So in other words -- and I don't want to put words in
23 your mouth, so you have to correct me if I don't state
24 something correctly. Okay? It's really important.

25 So you don't pay upfront for the patent, is what

1 you're say -- Backertop does not pay upfront, is that what
2 you're saying?

3 **A.** Correct. Yes, sir.

4 **Q.** Are you saying, though, that Backertop does have to
5 pay for the patent at some later date?

6 **A.** Correct.

7 **Q.** And do you have any agreements that define what the
8 total amount Backertop will have to pay for the patent?

9 **A.** I'd have to look at the agreement. I don't know the
10 exact percentage off the top of my head.

11 **Q.** All right.

12 **THE COURT:** Do we have any paperwork for the --
13 let's start with the '385 patent?

14 **MR. BURNS:** Sure, Your Honor. Yes, we do.
15 Just give me a moment.

16 Your Honor, I have two documents. Actually,
17 may I address the Court briefly on these? What the
18 documents are?

19 **THE COURT:** If you want to just -- I mean, I
20 can identify them. Do they have a title on them?

21 **MR. BURNS:** They do. The first -- this
22 document -- is the agreement between the previous owner of
23 the patents and Backertop. And then this one contains the
24 terms that are assumed by Backertop as consideration for
25 this agreement. Does that make sense? Do you follow?

1 **THE COURT:** Sure. We will have them marked as
2 Exhibits 2 and 3, please.

3 **MR. BURNS:** Your Honor, may I provide
4 Ms. LaPray with a copy?

5 **THE COURT:** Sure. That would be great. Thank
6 you.

7 **BY THE COURT:**

8 **Q.** Do you want to take a look at the patent purchase
9 agreement to see if that helps you recall how much
10 Backertop paid for the patents.

11 **A.** It's 49 percent share of the net proceeds, it looks
12 like.

13 **Q.** Where are you looking at in the agreement for that?

14 **A.** If you look on Page 2 under "Consideration."

15 **Q.** And that's -- that language says, "the seller shall
16 be entitled to a 49 percent share of the net proceeds"; is
17 that right?

18 **A.** Correct. Yes, sir.

19 **Q.** All right. And the only thing is, Ms. LaPray, if you
20 look at the top of the -- Page 1, that defines the seller
21 as Daedalus Blue LLC, D-A-E-D-A-L-U-S Blue LLC.

22 Do you see that?

23 **A.** Yes, sir.

24 **Q.** So that means that Daedalus is going to get
25 49 percent of the net proceeds, right?

1 **A.** I believe so. Oh, yes, sir.

2 **Q.** All right. And do you know what Daedalus Blue LLC
3 is?

4 **A.** No, sir.

5 **Q.** All right. So where do you think that -- or why do
6 you think if Daedalus Blue gets 49 percent share of the
7 net proceeds that that would mean that Backertop gets
8 49 percent of the share of the proceeds?

9 And, you know, this is --

10 **A.** I'm not understanding your question.

11 **Q.** Well, I asked you: Does this patent purchase
12 agreement help refresh your recollection as to what
13 Backertop paid for the '385 patent?

14 **A.** I guess, maybe, it would be better explained by my
15 counsel.

16 **Q.** So do you have any idea what Backertop gets -- or,
17 rather, what Backertop paid in order to take ownership of
18 the '385 patent?

19 **A.** No, sir.

20 **Q.** So you don't know if it's a sum of money?

21 **A.** I'm sure it's monetary. But, no, I don't know the
22 exact amount, no.

23 **Q.** I mean, do you have any idea? Is it close to \$5 or
24 \$5 million?

25 **A.** I would be guessing if I told you.

1 **Q.** All right. Do you know if there's a percentage of
2 any other sum that Backertop gets with respect to the '385
3 patent?

4 **A.** Like, what I would get from a settlement? Is that
5 what you are asking?

6 **Q.** I'm trying to figure out -- I'm really just trying to
7 understand what Backertop has given to someone to take
8 ownership of this patent that you've said you own or
9 Backertop owns.

10 **A.** Like I said, there's no upfront cost. It all comes
11 off the back end. So any settlement proceeds that are
12 obtained, then the previous owner gets paid for those
13 patents. If that makes sense.

14 **Q.** All right. So effectively, I guess, the previous
15 owners kind of loaned you the patent, and you're paying
16 it -- paying off the patent as litigation proceeds; is
17 that a fair summary?

18 You don't need to look at your lawyers.

19 Is that a fair summary?

20 **A.** Sure. Yes, sir.

21 **MR. BURNS:** Your Honor, may I address the Court
22 briefly?

23 **THE COURT:** No, I don't think so.

24 **MR. BURNS:** Okay. Thank you, Your Honor.

1 **BY THE COURT:**

2 **Q.** Now, there's this Patent Assignment Agreement, which
3 is Exhibit 2. Do you have that in front of you?

4 **A.** Yes, sir.

5 **Q.** Can you take a look at that and see, does that help
6 refresh your recollection about what Backertop has either
7 paid, or promised to pay, in order to take ownership of
8 the '385 patent?

9 **A.** I mean, it looks like it just refers back to the
10 prior agreement, which is the Patent Purchase Agreement,
11 the original.

12 **Q.** So does that help you? I'm just trying to -- you
13 said you needed the agreements and so the lawyer handed
14 them up. So I'm just trying to see if this helped you
15 recall or understand, now, what it is that Backertop paid,
16 or promised to pay, to take ownership of the patents.

17 Does it help?

18 **A.** It looks like it's 49 percent of the net proceeds.

19 **Q.** Okay. And where do you get that?

20 **A.** It's some sort of consideration, but...

21 You know, I rely on Mavexar and my attorneys to
22 handle all of this, and what consideration the previous
23 patent owner gets and, you know, all of that, so...

24 **Q.** Okay. And the attorneys that you rely on, who are
25 they?

1 **A.** Ron and Jimmy.

2 **Q.** That's Mr. Burns and Mr. Chong?

3 **A.** Correct. Yes, sir.

4 **Q.** Do you know who Terrace Licensing LLC is? Or what it
5 is?

6 **A.** No, sir.

7 **Q.** And this Exhibit 2, you signed on behalf of Backertop
8 Licensing LLC, right?

9 **A.** Yes, sir.

10 **Q.** Did you read it before you signed it?

11 **A.** I read through it, yes. Briefly, yes.

12 **Q.** What does it do, this Patent Assignment Agreement?

13 **A.** Sir, I rely on Mavexar and my attorneys to read
14 through these agreements. I trust them. I briefly
15 skimmed through it and, you know, I signed it. And I also
16 trust my husband who goes over these agreements as well.

17 **Q.** Do you know if, as the owner of Backertop, that you
18 are potentially liable for attorneys' fees or costs of
19 litigation?

20 **A.** Yes, sir.

21 **Q.** And what's your understanding of what the potential
22 liability is for you personally?

23 And do you understand, I've asked the question for
24 you? And I meant you, not Backertop. I meant you
25 personally.

1 **A.** It goes to Backertop, not me personally.

2 **Q.** Tell me about that. What do you mean by that?

3 **A.** The company would have to pay these fees and
4 expenses, back.

5 **Q.** What about you personally?

6 **A.** I'm not sure.

7 **Q.** You don't know if you personally have to pay any
8 costs associated with the assertion of the patents, like
9 the '385 patent?

10 **A.** It's my understanding that the company would be
11 liable.

12 **Q.** Okay. And that you would not be personally liable;
13 is that fair?

14 **A.** Correct.

15 **Q.** So in other words, it's the company, Backertop LLC,
16 that would be liable, not you personally; is that right?

17 **A.** I believe that's my understanding.

18 **Q.** Where did you get that understanding from?

19 **A.** That's just my understanding. I mean, I signed as
20 the managing member and of the company, so...

21 **Q.** So the company insulates you --

22 **A.** Not individually.

23 **Q.** So the company insulates you from liability, correct?

24 **A.** I don't know.

25 **Q.** All right. The company was formed when?

1 Do you know -- you said it was around April; is that
2 right?

3 **A.** It was in April of 2022. I just -- I couldn't tell
4 you the exact date in April that it was formed.

5 **Q.** Do you know when the lawsuit, the first lawsuit was
6 filed in this case?

7 **A.** I can't recall the date. No, sir.

8 **Q.** Does Backertop have a bank account?

9 **A.** No, sir.

10 **Q.** Does Backertop have any money?

11 **A.** I'm not -- I'm not sure. I mean, I've gotten -- are
12 you talking about, like, gotten some money for some
13 settlements?

14 **Q.** I just mean, does it have any money? Yeah. Does
15 Backertop have any money?

16 **A.** A little bit, yes.

17 **Q.** What does it have?

18 **A.** I think -- I couldn't tell you, off the top of my
19 head, the exact amount that's in there, that I have.

20 **Q.** And where does it keep whatever it has? Where does
21 it keep its money?

22 **A.** Well, any settlements that come in goes into my
23 personal account.

24 **Q.** Your personal account?

25 Is there anything in your personal account, other

1 than what has come through Backertop?

2 **A.** Uh-huh. Yes, sir.

3 **Q.** But Backertop itself doesn't have any separate
4 accounts, is what you're telling me; is that right?

5 **A.** Not that I'm aware of, no.

6 **Q.** Does Backertop have any offices?

7 **A.** It has a P.O. Box.

8 **Q.** All right. And how does it pay for the P.O. Box?

9 **A.** I'm not sure. I leave that up to Mavexar and my
10 attorneys for that, on how it's paid.

11 **Q.** You're the sole owner of Backertop; is that right?

12 **A.** Correct.

13 **Q.** Does it have any other employees?

14 **A.** No, sir.

15 **Q.** Does it have any other owners?

16 **A.** No, sir.

17 **Q.** So if Backertop had any assets, you would know about
18 it as the sole owner of it; is that right?

19 **A.** Correct.

20 **Q.** So one of these lawsuits, the 572 lawsuit, was filed
21 on April 28 of 2022.

22 What, if any, assets did Backertop have when it filed
23 the 572 lawsuit?

24 **A.** That's what I have Mavexar and my attorneys for.

25 **Q.** You say you were provided a copy of the complaint in

1 the 572 action before it was filed; is that right?

2 **A.** Correct. Yes, sir.

3 **Q.** And how were you provided that?

4 **A.** Through my husband, Brandon LaPray.

5 **Q.** Did he hand it to you physically or did he e-mail it
6 to you? How did you get it?

7 **A.** It was shown to me on his laptop, his computer.

8 **Q.** And it was shown to you where?

9 **A.** On his laptop, on his computer, just as a Word
10 document.

11 **Q.** And where were you?

12 **A.** At my home.

13 **Q.** Okay. When did you see it?

14 **A.** I can't recall the date.

15 **Q.** Then how do you know it was before the lawsuit was
16 filed?

17 **A.** I saw it before it was filed. I just -- I mean, it
18 was in April at some point, I just don't know what date it
19 was.

20 **Q.** And how did you communicate to anyone at Mavexar that
21 you were okay with the complaint being filed?

22 **A.** I trust Mavexar and my attorneys. And if they felt
23 that they needed to file the lawsuit, then they had my
24 full authority to do so.

25 **Q.** Have you been paid any money as a result of the

1 litigation in the 572 action?

2 **A.** I'm not -- I'm not sure.

3 **Q.** Has Backertop made any money?

4 **A.** Maybe roughly around 2,000, I -- I think. I don't
5 know the exact amount.

6 **Q.** How is that money paid to Backertop? By check? By
7 wire? How was it paid?

8 **A.** Direct deposit.

9 **Q.** And that's direct deposit into your personal bank
10 account?

11 **A.** Correct. Yes, sir.

12 **Q.** And who deposited the money?

13 **A.** Mavexar.

14 **Q.** I assume you flew here?

15 **A.** Yes, sir.

16 **Q.** Who paid for your flight?

17 **A.** Mavexar.

18 **Q.** Who made your travel arrangements?

19 **A.** Linh Dietz at Mavexar.

20 **Q.** Do you have concerns that at some point you might be
21 required to, either personally or through Backertop, pay
22 for liabilities incurred as a result of litigation
23 relating to the patents that are -- that you think are
24 owned by Backertop?

25 **A.** Yes, sir. I do understand that's a risk. Yes, sir.

1 **Q.** What's -- what do you understand about the potential
2 risk?

3 **A.** I understand that if, say, there's not a settlement
4 and that money can't be paid back from that settlement
5 that I could be liable for those fees and expenses.

6 **Q.** Has anyone told you how much those fees and expenses
7 could be?

8 **A.** I know that Mavexar keeps their fees and expenses
9 very low, and I could ask for a sheet anytime. But, no, I
10 haven't been informed.

11 **Q.** All right. And so your understanding is, the fees
12 and expenses that you're at risk of having to pay, are
13 Mavexar's fees and expenses?

14 **A.** Well, not -- and also the attorneys, and then the
15 previous patent owners, is what my understanding is, that
16 I would have to pay back.

17 **Q.** And these are the attorneys and the -- the attorneys
18 for Mavexar? Who are the attorneys you're talking about?

19 **A.** Well, they're my attorneys, but Mavexar negotiated
20 the agreement and hired them.

21 **Q.** I see.

22 So just so I understand it, you've been told that
23 your potentially liable for the fees and expenses of
24 Mavexar and for your attorneys; is that right?

25 **A.** Correct.

1 **Q.** Have you been told that you're liable, potentially,
2 for anything other than those fees and expenses?

3 **A.** No. Other than the fees and expenses, attorneys
4 fees, and the patent fees, no, sir.

5 **Q.** The patent fees are what?

6 **A.** Well, the fee for the previous patent, to pay for the
7 previous patent.

8 **Q.** Okay. So let's make sure we have the list, the
9 complete list. You're potentially -- and by "you're," you
10 mean Backertop, first of all, right?

11 **A.** Correct. Yes, yes.

12 **Q.** I mean, because you believe you're not personally
13 liable for anything, correct?

14 **A.** That's my understanding, yes.

15 **Q.** Right.

16 Okay. So Backertop, you believe, is potentially
17 liable for Mavexar's fees and expenses; is that right?

18 **A.** Correct. Yes, sir.

19 **Q.** And for the attorneys for you, the fees and expenses
20 associated with the attorneys for you, correct?

21 **A.** Uh-huh.

22 **Q.** Is that a yes?

23 **A.** Yes, sir. Sorry.

24 **Q.** That's all right.

25 And then, you think you're also potentially liable

1 for some fees and expenses of the prior owner of the
2 patents; is that right?

3 **A.** Correct. Yes.

4 **Q.** And are there any other fees or expenses or moneys of
5 any kind that you have been told you could be liable for,
6 "you" being Backertop?

7 **A.** No.

8 **Q.** So, for instance, you're in a lawsuit against --
9 well, do you know who the defendant in this case is,
10 either of these cases?

11 **A.** I'd have to pull the -- the complaint, Your Honor.

12 **Q.** All right. Well, one of them is Canary Connect.

13 **A.** Okay.

14 **Q.** Do you have any understanding that you could be --
15 that Backertop could be liable to Canary Connect in any
16 way?

17 **A.** I'm not sure that I would liable to them -- or, I
18 mean, if they were awarded their attorneys' fees, I mean,
19 I could be liable to pay their fees.

20 **Q.** Okay. So you do think that Backertop could be liable
21 for the attorney fees of Canary Connect?

22 **A.** Possibly.

23 **Q.** Doesn't that concern you?

24 **A.** I mean, it's a risk, yes. But, you know, I trust
25 Mavexar, and I trust my attorneys, so.

1 I mean, I understand there is a risk of that, yes,
2 sir.

3 **Q.** Well, if Backertop were held liable to pay money to
4 Canary Connect, where would it get its money?

5 **A.** I'm not sure.

6 **Q.** I mean, it doesn't have any bank accounts, right?

7 **A.** I mean, I guess we'd have to cross that bridge when
8 we come to it.

9 I'm -- I'm not sure. But I understand that I would
10 have to -- you know, could be liable for that.

11 **Q.** And who's explained that to you?

12 **A.** My husband, Brandon.

13 **Q.** Do you know what the potential liability is?

14 **A.** What do you mean? I don't --

15 **Q.** The amount. Do you know what the potential amount
16 could be?

17 **A.** No. I don't, no.

18 **Q.** I'm just trying to understand how you would hire a
19 lawyer, hire Mavexar; they're out suing people. And it
20 says -- it sounds like you think it's possible you could
21 be liable for attorney fees of somebody who's sued. But
22 you don't have any idea what they could be. How you
23 would, kind of, you know, sleep soundly at night.

24 **A.** Agree to do it?

25 **Q.** Yeah.

1 **A.** I mean, I trust Mavexar. I've known them for over
2 seven years since my husband has been an independent
3 contractor for them. I also trust my husband and his
4 judgment. I trust Mavexar and their judgment. I trust my
5 attorneys. I believe that they're going to act in my best
6 interest. So that's why I agreed to do this.

7 **Q.** And these attorneys, you had never met until a month
8 and a half ago, though, right?

9 **A.** Not personally, no.

10 **Q.** Well, you've never even spoken with them through
11 e-mail, text, or in any other way, correct?

12 **A.** No, but I trust Mavexar. I mean, I believe that
13 they're going to act in my best interest and hire the best
14 attorneys.

15 **Q.** Did you know anything about Mr. Chong before he was
16 retained in April of 2022?

17 **A.** No. Not very much, no.

18 **Q.** Did you know anything about Mr. Burns before April of
19 2022 when he was hired?

20 **A.** No, sir. No, sir.

21 **Q.** Were you provided any background material on either
22 of them before Backertop retained them?

23 **A.** No, sir.

24 **Q.** Were you provided with information about their fees
25 before Backertop retained them?

1 **A.** I understand that they are on a contingency basis, is
2 the engagement.

3 **Q.** And that means they get a percentage of the recovery;
4 is that fair?

5 **A.** Correct. Yes, sir.

6 **Q.** What percentage of recoveries does Backertop get from
7 any litigation?

8 **A.** I get 5 percent of that.

9 **Q.** Who gets the other 95 percent?

10 **A.** Mavexar.

11 **Q.** Where is Mavexar located?

12 **A.** I'm not sure where all the owners are located.

13 **Q.** Do you know where any of them are located?

14 **A.** I couldn't tell you off the -- I would be guessing,
15 Your Honor, if I told you, and I don't want to do that.

16 **Q.** That's all right. You don't want to guess. You're
17 under oath. That's a good thing. Don't guess.

18 Do you know how many employees Mavexar has?

19 **A.** Oh, goodness. I know they have hired a couple more
20 people. Maybe four to -- four to five employees, I think.

21 **Q.** Who do you know that works for Mavexar, that just --
22 when I say who you know, not necessarily that you've met
23 them personally, but --

24 **A.** But who I know.

25 **Q.** -- but who you know of that works there?

1 **A.** Sure, sure.

2 **Q.** Linh Dietz?

3 **A.** Yes, sir.

4 **Q.** Okay. Who else?

5 **A.** Brandon LaPray, Papuol, and I also know Gau, Sanjay,
6 and Lillian. I think there was one other, Denay. I think
7 she's new, I believe.

8 **Q.** Have you met any of these people, other than your
9 husband?

10 **A.** I have met Gau via Zoom. I have not met Linh. I've
11 spoken with her via e-mail and through phone
12 conversations. But other than those, I have not -- oh,
13 and Papuol. I've met him via Zoom as well.

14 **Q.** When did you meet Papuol?

15 **A.** Probably about a month ago, I met Papuol.

16 **Q.** And did it have to do with this case?

17 **A.** Yes, sir. Yes, sir.

18 **Q.** Tell me about your conversation with him. What did
19 he say?

20 **A.** He just kind of told me what was -- what was going on
21 and that I would be having to do a hearing today. That's
22 kind of the extent of our conversation.

23 **Q.** Was he the first person who told you you'd have to do
24 the hearing?

25 **A.** No, sir. Brandon was the first.

1 **Q.** Okay. Was Papuol the second one you discussed it
2 with?

3 **A.** The second, yes.

4 **Q.** And tell me, you know, this is by Zoom call?

5 **A.** Yes. Except with my husband, that was in person.

6 **Q.** Right. So Papuol, what -- try to remember, if you
7 could. What did he tell you?

8 **MR. BURNS:** Your Honor, I, respectfully, am
9 going to object to this. There is a Community of Interest
10 Agreement with Mavexar's employees. Also, we, I believe,
11 were part of that conversation, so there may be privilege
12 issues here.

13 **THE COURT:** Well, the contract explicitly says
14 that Mavexar is providing only nonlegal services.

15 **MR. BURNS:** Yes, Your Honor. But it also,
16 explicitly, in the case that there's community interest --
17 a community of interest privilege that exists between
18 Backertop and Mavexar. And, also, I believe at the same
19 time, we were part of those same conversations as her
20 counsel, as Backertop's counsel.

21 **THE COURT:** I'm going to overrule that
22 objection.

23 **MR. BURNS:** Thank you, Your Honor.

24 **THE COURT:** I mean, if you want to proffer some
25 more evidence, but you know, we've already had three

1 hearings. I think all the lawyers have acknowledged
2 they're dealing with a nonlegal entity. I think there's
3 some ethical issues about how you're negotiating a
4 retention agreement with a client through a nonlegal
5 entity. And I'm going to hear what Papuol had to say.

6 **MR. BURNS:** Okay, your Honor. Thank you.

7 **BY THE COURT:**

8 **Q.** Go ahead. What did Papuol tell you?

9 **A.** He just had informed me that there was an order that
10 you issued and that there would be a hearing and, you
11 know, when it was. And just kind of went over a few of
12 the -- of the agreements that were signed just to kind of
13 refresh my recollection.

14 **Q.** And what agreements were they?

15 **A.** It was, like, the Certificate of Formation for the
16 entity. All of these agreements that you marked as
17 exhibits were mainly the agreements that were discussed.

18 **Q.** What did he say about the Certificate of Formation?

19 **A.** I mean, I do this also in work, so I knew what it
20 meant.

21 He just -- you know, the date it was filed. It was
22 the filed with Texas SOS. You know, here's the registered
23 agent, you know, the manager. All of that stuff. Just,
24 basically, what was in the Certificate of Formation.
25 Then, the Certificate of Filing, that was sent in by the

1 Secretary of State.

2 **Q.** And you understood your relationship with him was
3 governed by that agreement that we also discussed where --

4 **A.** Yeah. Yes, sir, through -- with Mavexar. Yes, sir.

5 **Q.** Where he agreed to provide nonlegal services to you,
6 correct?

7 **A.** Correct.

8 **Q.** Have you had any other dealings with Papuol?

9 **A.** No, sir.

10 **Q.** What do you know about Papuol?

11 **A.** I -- I don't really know much about Papuol, other
12 than he works for Mavexar.

13 **Q.** What started all this was kind of -- I wanted to get
14 a sense of what you know about Mavexar.

15 So you know that they have, what, four to five folks
16 who work for them?

17 **A.** Uh-huh.

18 **Q.** Is that right?

19 **A.** Uh-huh. Yes, sir. Sorry.

20 **Q.** And what does it do? What does Mavexar do?

21 **A.** I believe they monetize patents.

22 **Q.** You mentioned -- is it Gau?

23 **A.** I think it's Gau, I think, is how you pronounce it.

24 **Q.** How would you spell it, if you could?

25 **A.** Oh, gosh. His full name, I have no idea. But I

1 think it's, like, G-A-U, is -- I'm not sure how to spell
2 his name.

3 Q. Do you know what his last name is?

4 A. No, sir. I think it starts with a P, but I don't...

5 Q. Possibly Bodepudi; is that right?

6 A. Yes, sir.

7 Q. B-O-D-E-P-U-D-I, would that make sense?

8 A. Yes, sir. Yes, sir.

9 Q. Do you know Lillian Woung?

10 A. I do.

11 Q. And what does that person do?

12 A. She's the owner of Mavexar.

13 Q. And you say "the owner." Is she the only owner?

14 A. Well, she's one of the owners. I'm sorry. There's
15 three. She's one of them.

16 Q. Who are the others that you know of?

17 A. Sanjay Pant and Gau, are the other two.

18 Q. Now, do you know something called IP Edge?

19 A. I've heard of the name. Yes, sir.

20 Q. And do you know what it does?

21 A. No, sir, I do not.

22 Q. Do you know if it has a relationship with Mavexar?

23 A. It might. I just -- I just don't know.

24 Q. You don't know?

25 A. I don't know the connection.

1 **Q.** All right.

2 Can you tell me all of the sources of funding that
3 Backertop has for anything?

4 **A.** My understanding is, it's through Mavexar, is the
5 funding.

6 **THE COURT:** All right. Thank you very much.
7 You may step down. Appreciate it.

8 **THE WITNESS:** Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 **THE WITNESS:** Did you want me to take these or
11 do you want a copy?

12 **THE COURT:** We'll take them.

13 **THE WITNESS:** Okay. Thank you, Your Honor.

14 **THE COURT:** Thank you.

15 Mr. Burns, do you wish to say anything?

16 **MR. BURNS:** I'm sorry, Your Honor?

17 **THE COURT:** Do you wish to say anything?

18 **MR. BURNS:** I don't have anything at this time,
19 Your Honor, not unless the Court has questions.

20 **THE COURT:** Who's the real owner? Who's the
21 real party in interest of the asserted patents in this
22 case?

23 **MR. BURNS:** Backertop.

24 **THE COURT:** And we've just heard testimony that
25 95 percent of the proceeds go to Mavexar.

1 **MR. BURNS:** I'm not clear on that part, because
2 I'm not clear on the agreement between Backertop and
3 Mavexar themselves. I know that, in acquiring the
4 patents, Backertop took on the obligation of Terrace to
5 the previous owner, the Daedalus Blue, I think, is who you
6 referred to, which was the 45 percent. And so --

7 **THE COURT:** 49 percent, I think.

8 **MR. BURNS:** I'm sorry, 49 percent. Excuse me.
9 And then Backertop, obviously, gets its 5 percent. And
10 then Mavexar has its portion. We, of course, have our
11 portion.

12 **THE COURT:** So what are the portions? What
13 does Mavexar get, under your understanding?

14 **MR. BURNS:** I'm -- I'm not sure. I'm not sure
15 of the arrangement between Backertop and Mr. Chong. I'm
16 only sure of what the arrangement is between my firm and
17 Backertop.

18 **THE COURT:** What does your firm get?

19 **MR. BURNS:** Depending on the stage of the
20 litigation. So in these two cases, we got nothing.
21 They're dismissed. We filed a motion to dismiss them, or
22 notice of dismissal. In a case where there's recovery, we
23 get 22.5 percent.

24 **THE COURT:** And what bar are you a member of?

25 **MR. BURNS:** Texas State Bar, Your Honor.

1 **THE COURT:** How do you -- can you speak to the
2 professional rules of conduct and the circumstance where a
3 client is retained by a lawyer, but has no communication
4 whatsoever with the lawyer? How does that work?

5 How is the lawyer -- for instance, how can the
6 lawyer run conflicts and be assured that it doesn't have a
7 conflict?

8 How can the lawyer apprise the client of the
9 lawyer's obligations and the fiduciary responsibilities he
10 owes to the client?

11 I mean, all those questions. Have you looked
12 into that?

13 **MR. BURNS:** I'm familiar with what you're
14 referring to, yes, Your Honor.

15 **THE COURT:** So tell me, what rules are
16 implicated, and how is a lawyer able to do that under the
17 Rules of Professional Conduct?

18 **MR. BURNS:** Well, in this particular case, I
19 was approached by Mavexar. I have previously worked with
20 Papuol Chaudhari over a decade ago, when he was in
21 another -- he was in a law firm. We had done some patent
22 litigation previously together.

23 He reached out to me, indicated that he
24 represented and was essentially a consultant/agent for
25 some companies, would I like to examine and review some of

1 these portfolios and see if I can participate. I said
2 yes.

3 He sent me the agreement they had with
4 Backertop. I reviewed that. It seemed like agent status
5 or consultant status with Mavexar. I got the information
6 on Backertop and also got the information on the prospects
7 that they were looking at, and ran conflicts, checked that
8 way. And came back with --

9 **THE COURT:** What did you say about the
10 conflicts? What, you got --

11 **MR. BURNS:** I said I ran conflicts both with
12 Backertop and Ms. LaPray, and then also prospective
13 defendants in each of these cases, to make sure that, you
14 know, our firm had no conflicts. And then agreed to
15 representation.

16 Sent over a draft agreement. My understanding
17 is it was reviewed, agreed to. We signed it. And then I
18 began preparing the complaints.

19 **THE COURT:** Do you have a copy of your
20 retention agreement with Backertop?

21 **MR. BURNS:** I do not, Your Honor, no.

22 **THE COURT:** I would like a copy of it.

23 **MR. BURNS:** I would happily provide that to the
24 Court.

25 **THE COURT:** And, actually, we'll be issuing,

1 shortly, an order requesting production of a number of
2 documents. We're about to do it in some of the other
3 cases where these issues have arisen.

4 **MR. BURNS:** Yes, Your Honor.

5 **THE COURT:** You agree that the Court has an
6 obligation for the real parties in interest to be before
7 it to assure that?

8 **MR. BURNS:** I do agree, yes, sir.

9 **THE COURT:** I mean, there's a rule of Federal
10 Civil Procedure that addresses that, right?

11 **MR. BURNS:** That is correct, Your Honor.

12 **THE COURT:** Yeah. And are you -- you're of the
13 mind that Mavexar is not a real party in interest here; is
14 that your position?

15 **MR. BURNS:** That's -- yes, Your Honor, that
16 would be my position. My understanding is that -- and
17 according to documentation I reviewed, Backertop owns the
18 patents. The compensation is a contingent compensation to
19 the previous owner.

20 Mavexar, as a consultant and advisor to
21 Backertop, gets a portion. It runs a lot of the
22 administrative processes for Backertop, and then we run
23 the cases. And that's my understanding.

24 **THE COURT:** And by structuring this litigation
25 the way you have with Mavexar, you've basically put a

1 plaintiff in this court asserting a patent, and the
2 plaintiff has no assets. So you've immunized,
3 effectively, the plaintiff from the consequences of a
4 frivolous lawsuit, for instance.

5 Mavexar, who's driving the train, isn't
6 formally a party here, so you've insulated it, assuming
7 nobody wanted to look into this.

8 Fair?

9 **MR. BURNS:** I wouldn't completely agree with
10 that, Your Honor. The client here, Backertop has formed
11 as an LLC, which does provide a level of insulation for
12 Ms. LaPray personally.

13 I did not inquire as to Backertop's finances or
14 banking accounts or anything of that nature before the
15 proceedings began, so I had no knowledge of that prior.

16 But it's a good faith -- in our estimation, it
17 was a good faith claim, good faith basis for filing the
18 suits. We had a plaintiff that owned patents. We had
19 defendants that we had good faith claim of infringement.
20 So we considered it fair basis for filing.

21 **THE COURT:** Anything else you want to say?

22 **MR. BURNS:** No, Your Honor.

23 **THE COURT:** Okay. Thank you.

24 Mr. Chong?

25 **MR. CHONG:** No, Your Honor.

1 **THE COURT:** All right. I need to look further
2 into this and think about it more. You're invited, if you
3 want, either of you, to submit any briefing.

4 I've already raised in, I'll call them parallel
5 hearings, concerns I have. I've articulated some further
6 concerns because I think some of the testimony here has
7 only added to the concerns.

8 And I guess we're adjourned.

9 (The proceedings concluded at 11:21 a.m.)

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1
2 CERTIFICATE OF COURT REPORTER
3

4 I hereby certify that the foregoing is a true and
5 accurate transcript from my stenographic notes in the
6 proceeding.

7 /s/ Bonnie R. Archer
8 Bonnie R. Archer
9 Official Court Reporter
U.S. District Court

BY THE COURT: [5] 12/12 17/24 26/7 28/25 44/7 MR. BURNS: [66] MR. CHONG: [3] 3/9 3/16 52/25 MR. SILVERSTEIN: [1] 3/11 THE CLERK: [2] 12/3 12/11 THE COURT: [74] THE WITNESS: [4] 12/6 47/8 47/10 47/13	33/17 36/1 36/18 40/15 40/18 40/24 42/5 42/18 44/3 44/18 45/10 45/11 45/14 50/9 51/2 53/2 Absolutely [1] 11/25 accept [1] 22/20 accordance [1] 19/3 according [1] 51/17 account [5] 32/8 32/23 32/24 32/25 35/10 accounts [3] 33/4 39/6 52/14 accurate [1] 54/5 acknowledged [1] 44/1 acquiring [1] 48/3 act [2] 40/5 40/13 action [2] 34/1 35/1 actually [5] 4/1 13/24 20/9 25/16 50/25 added [1] 53/7 address [5] 8/8 10/3 10/16 25/17 28/21 addresses [1] 51/10 addressing [1] 5/21 adjourned [1] 53/8 administrative [1] 51/22 advance [1] 6/18 advanced [1] 7/17 advisor [1] 51/20 affirmed [1] 12/9 after [1] 21/18 again [2] 9/11 18/23 against [1] 38/8 agent [3] 44/23 49/24 50/4 ago [8] 20/15 20/19 21/3 21/7 21/13 40/8 42/15 49/20 agree [7] 7/9 8/1 9/15 39/24 51/5 51/8 52/9 agreed [6] 14/10 18/7 40/6 45/5 50/14 50/17 agreement [38] 7/5 11/2 15/13 17/6 17/8 17/13 17/25 18/2 18/5 18/6 18/11 18/16 18/24 19/3 19/17 20/1 22/1 22/8 22/18 22/19 25/9 25/22 25/25 26/9 26/13 27/12 29/2 29/10 29/10 30/12 36/20 43/10 44/4 45/3 48/2 50/3 50/16 50/20 agreements [9] 13/17 25/7 29/13 30/14 30/16 44/12 44/14 44/16 44/17 ahead [4] 4/4 5/16 8/17 44/8 ALAN [1] 2/9 all [74] almost [3] 14/8 23/25 24/1 already [2] 43/25 53/4 also [14] 10/24 12/21 30/15 36/14 37/25 40/3 42/5 43/10 43/15 43/18 44/19 45/3 50/6 50/12 am [3] 12/16 13/24 43/8 amount [7] 24/18 25/8 27/22 32/19 35/5 39/15 39/15 another [1] 49/21 any [57] anybody [7] 11/2 16/3 16/7 19/9 19/13 23/4 24/4 anyone [3] 10/19 34/20 36/6 anything [14] 5/14 23/24 24/4 32/25 37/2 37/13 40/15 40/18	47/3 47/15 47/17 47/18 52/14 52/21 anytime [1] 36/9 APPEARANCES [1] 2/1 Appreciate [1] 47/7 apprise [1] 49/8 approached [1] 49/19 appropriate [1] 10/8 April [11] 8/19 15/3 15/4 19/18 32/1 32/3 32/4 33/21 34/18 40/16 40/18 April 28 [1] 33/21 Archer [2] 54/7 54/8 are [41] 3/12 3/21 5/22 7/11 7/16 10/21 10/23 12/15 13/10 16/2 16/22 16/23 18/16 20/10 20/10 24/9 25/4 25/18 25/24 26/13 28/5 28/11 29/24 30/18 32/11 35/23 35/23 36/12 36/17 36/18 37/5 38/4 41/1 41/12 41/13 46/16 46/17 48/12 48/24 49/15 51/12 arisen [1] 51/3 around [2] 32/1 35/4 arrangement [3] 9/16 48/15 48/16 arrangements [3] 7/11 9/10 35/18 articulated [1] 53/5 as [35] 6/7 6/22 8/21 9/17 9/19 10/11 10/23 12/8 12/9 14/7 16/8 16/14 17/15 17/17 17/21 17/25 25/24 26/1 26/21 27/12 28/16 30/16 30/17 31/19 33/18 34/9 34/25 35/22 42/13 43/19 43/20 44/16 51/20 52/11 52/13 ask [2] 11/13 36/9 asked [4] 7/3 10/12 27/11 30/23 asking [3] 7/24 11/21 28/5 asserted [1] 47/21 asserting [1] 52/1 assertion [1] 31/8 assets [8] 7/6 14/9 14/12 14/18 16/18 33/17 33/22 52/2 Assignment [2] 29/2 30/12 associated [2] 31/8 37/20 assume [1] 35/14 assumed [1] 25/24 assuming [1] 52/6 assure [1] 51/7 assured [1] 49/6 attempting [1] 8/7 attorney [2] 38/21 39/21 attorneys [24] 22/1 23/7 23/9 23/15 24/7 29/21 29/24 30/13 33/10 33/24 34/22 36/14 36/17 36/17 36/18 36/19 36/24 37/3 37/19 37/20 38/25 40/5 40/7 40/14 attorneys' [2] 30/18 38/18 AUGUST [1] 1/6 authority [6] 22/6 22/7 22/9 22/10 22/13 34/24 awarded [1] 38/18 aware [2] 16/22 33/5	back [10] 5/25 14/3 15/8 15/13 26/11 29/9 31/4 36/4 36/16 50/8 BACKERTOP [79] Backertop's [3] 4/14 43/20 52/13 background [1] 40/21 bank [3] 32/8 35/9 39/6 banking [1] 52/14 bar [2] 48/24 48/25 based [1] 7/4 bases [1] 8/8 basically [3] 14/12 44/24 51/25 basis [6] 5/5 5/17 6/14 41/1 52/17 52/20 be [49] 3/7 5/3 5/4 5/13 6/3 7/7 7/8 7/15 8/3 8/4 8/11 9/12 10/10 11/4 11/9 11/21 12/11 15/5 17/16 17/20 22/4 26/5 26/16 27/14 27/25 31/10 31/12 31/16 35/20 36/4 36/5 36/7 38/5 38/14 38/15 38/19 38/20 39/10 39/16 39/21 39/22 41/14 42/21 43/11 44/10 49/6 50/25 51/6 51/16 because [6] 8/14 13/24 22/21 37/12 48/1 53/6 been [12] 9/4 12/8 13/8 13/9 14/7 14/19 34/25 36/10 36/22 37/1 38/5 40/2 before [16] 1/20 5/8 21/1 21/7 22/25 24/5 30/10 34/1 34/15 34/17 40/15 40/18 40/22 40/25 51/6 52/14 began [2] 50/18 52/15 beginning [2] 3/3 7/3 behalf [2] 22/9 30/7 being [5] 7/4 12/8 23/5 34/21 38/6 believe [16] 10/22 10/24 11/5 15/3 16/21 21/12 27/1 31/17 37/12 37/16 40/5 40/12 42/7 43/10 43/18 45/21 best [3] 40/5 40/13 40/13 better [1] 27/14 between [6] 22/1 25/22 43/17 48/2 48/15 48/16 beyond [2] 7/6 8/7 bit [1] 32/16 blanket [1] 22/10 Blue [5] 26/21 26/21 27/2 27/6 48/5 Bodepudi [1] 46/5 Bonnie [2] 54/7 54/8 borrower [1] 9/16 borrower's [1] 7/6 both [4] 5/18 6/11 8/20 50/11 Box [2] 33/7 33/8 Brandon [7] 13/12 18/7 23/3 34/4 39/12 42/5 42/25 Brandon LaPray [1] 42/5 bridge [1] 39/7 briefing [1] 53/3 briefly [4] 25/17 28/22 30/11 30/14 bring [1] 17/12 brought [1] 23/5 BURNS [15] 2/6 3/12 20/12 20/13 20/14 20/16 20/18
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